

E-Filed 10/17/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHARLES JOSEPH CARTER,

No. C 11-1242 RS (PR)

Petitioner,

ORDER STAYING ACTION

v.

GARY SWARTHOUT, Warden,

Respondent.

This is a federal habeas corpus action filed pursuant to 28 U.S.C. § 2254 by a *pro se* state prisoner. Petitioner moves to amend the petition to include his unexhausted claims, which were dismissed by Court order (Docket No. 11), and to stay the petition while he exhausts some claims in state court. *See* Docket No. 12.

A district court may stay a mixed habeas petition, i.e., a petition containing both exhausted and unexhausted claims, to allow the petitioner to exhaust state court remedies as to those claims that have not yet been presented to the state's highest court. *See Rhines v. Webber*, 544 U.S. 269, 277–78 (2005). In *Rhines*, the Supreme Court discussed the stay-and-abeyance procedure, explaining that a stay and abeyance “is only appropriate when

1 the district court determines there was good cause for the petitioner's failure to exhaust his
2 claims first in state court," the claims are not meritless, and there are no intentionally dilatory
3 litigation tactics by the petitioner. *Id.* If the stay is granted, the petitioner does not have to
4 worry that his newly-exhausted claims will be barred by the statute of limitations because
5 those claims remain pending in federal court. *King v. Ryan*, 564 F.3d 1133, 1139, 1140. (9th
6 Cir. 2009).

7 Petitioner's motion to amend the petition to include the unexhausted claims, and his
8 motion to stay the newly-amended petition under *Rhines*, are GRANTED, good cause
9 appearing therefor. Nothing further will take place in this action until the Court decides
10 further action is appropriate, or until petitioner exhausts the unexhausted claims and, within
11 thirty days of doing so, moves to reopen this action, and lift the stay.

12 For the foregoing reasons, the above-titled action is hereby STAYED until petitioner
13 files a motion to reopen as described above. The Clerk shall ADMINISTRATIVELY
14 CLOSE the file pending the stay of this action, and terminate Docket No. 12.

15 **IT IS SO ORDERED.**

16 DATED: October 17, 2011


17 RICHARD SEEBORG
United States District Judge